IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Dalpat Singh & Anr. vs. The State of Rajasthan.

D.B.Cri. Appeal No.266/2002

Under Section 374 Cr.P.C. against the judgment dated 12.02.02 passed by the Addl. District & Sessions Judge (Fast Track), Jalore in Sessions Case No.13/2001 (Old No.25/2000).

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Date of Judgment: **02th August, 2007.**

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.B.S.Rathore] for the appellants.
Mr.Dhirendra Singh]

Mr.JPS.Choudhary, Public Prosecutor.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

The accused appellants have filed the present appeal against the judgment of Addl. District & Sessions Judge (Fast

Track), Jalore in Sessions Case No.13/2001 (Old No.25/2000) dated 12.02.02.

The prosecution was initiated with the lodging of a report with Police Station Sayala, on the information of Dayaram, Compounder on telephone that in Gayatri Ashram, Maharaj Joitanandji is lying dead and Tara Ram, PW/5 has sustained injuries. This report was entered into Rojnamcha and the SHO, Sayala, started for the scene of occurrence. At 07.45 AM near Poshana Piao he met with Hari Singh and Suraj Singh etc. who were taking injured Tara Ram to the hospital in a jeep. He tried to talk to injured Tara Ram , who being unconscious, could not talk to him. He directed Mohan Lal, to go to the hospital and get him treated and instructed that as soon as the injured get into his senses, he should be informed. The SHO went to the scene of occurrence and he found the deceased lying dead on the cot. On the basis of a statement of Dudh Singh , Ex.P/3 was drawn , which was treated as FIR subsequently and after lodging of the first information report as FIR No. 82/2000 the investigation proceeded. After investigation challan was filed against the accused. The case was committed to the court of Sessions from where it was made over to the trial court for trial. The accused were charged as under :

"दिनांक 10.7.2001 को अभियुक्त दलपत सिंह को भा.दं.सं. की धारा 302, 307/34, 326/34 एवं 324/34 एवं अभियुक्त तेजाराम को भा.दं.सं. की धारा 302/34, 307, 326 एवं 324 के अपराधों के आरोपों से आरोपित किया गया तो इन्होंने इन आरोपों को अस्वीकार कर अन्वीक्षा चाही।"

The accused denied the charges and claimed trial. At the trial 15 witnesses were examined and 33 documents were exhibited. Accused were examined under Section 313 Cr.P.C. Two defence witnesses were produced and three documents were exhibited.

The trial court, after considering the case of the prosecution, came to the conclusion that the accused were responsible for causing death of deceased Joitanandji and causing injury to Tara Ram. The accused appellants have been sentenced as under:-

S.No	*Name of the accused*	*Offence u/s*	*conviction*	*fine*	*In default*
1	Dalpat Singh	302IPC	L.I.	5,000/-	6 months' S.I.
	-do-	307/34 IPC	10 Years' R.I.	2,000/-	3 months' S.I.
	-do-	326/34 IPC	10 Years' R.I.	2,000/-	3 months' S.I.
	-do-	324/34 IPC	3 years' S.I.	1,000/-	1 month's S.I.
2	Teja Ram	302/34 IPC	L.I.	5,000/-	6 months'
	-do-	307 IPC	10 years' R.I.	2,000/-	3 months' S.I.
	-do-	326 IPC	10 years' R.I.	2,000/-	3 months' S.I.
	-do-	324 IPC	3 years' S.I.	1,000/-	1 month's S.I.

The learned counsel for the accused stressed that there is no light available at the scene of occurrence. On this aspect the testimony of injured PW/5 Tararam and Investigating Officer's statement were to the effect that there was light at the scene of occurrence. However, the defence examined a JEN, who without visiting the site, said that there was no official electricity connection in the Ashram. While shuffling through the papers, one of the photographs we noticed electric circuit breaker and a bulb hanger. That photograph was got enlarged from the negative available on record. In that enlarged photograph a circuit breaker and a bulb is available to be seen, which was shown to the learned counsel for the appellants who put his signatures on the photograph and the

question of light was not then pressed by the learned counsel and prosecution was given this concession and the arguments that there was no sufficient light seen, is not pursued further.

The learned counsel for the appellants further urged that PW/5 Tara Ram was seen to have been standing outside the Ashram in the morning by Devi Singh and, other witnesses who have not been produced. This aspect has not been believed by the trial court. The case of the prosecution is challenged by the learned counsel that there is variance on this aspect. Tara Ram was seen at the door but the statement of witnesses, and the medical report ,are to the effect that the injured was unconscious and in that view of the matter, the trial court believed that in that circumstances it cannot be said that Tara Ram was standing at the door. We also feel that with the kind of injuries that he had on his head, i.e. one of the injuries is 21 cm. long and another is 14cm. long cut wound with a fracture , with that , a man can loose consciousness. The medical report is clear that he was unconsciousness/ semiconscious. The testimony of the investigating officer cannot be disbelieved when he states that Tara Ram was unconscious at 07.45 AM. It is difficult to believe that early morning he was standing at the door . It is merely a kind of statement which is not effecting the truthfulness of the prosecution

case. It cannot be believed that with such injuries, a man can keep standing for a very long time and in that view of the matter, nothing can be concluded in favour of the defence and, therefore, this argument lose its potentiality .

Learned counsel further argued that deceased Maharaj Joitanand used to advance loan to the people and there were people who had grudge against him, thus they had killed the Maharaj and in that view of the matter, the prosecution had not known as to who were the assailants and, therefore, at the inception no names of the accused appeared in the report recorded in Rojnamcha. In our opinion, until PW/5 Tara Ram gained consciousness, it cannot be expected to have the name of the accused to appear. The names of the accused having not come , nothing can be read against the prosecution. The injured Tara Ram, having come to his senses late , has named both the accused persons. In that view of the matter, it cannot be said that the prosecution had not been fair to clearly put its case. As soon as the injured eye witness was in his senses, he named the accused persons and that being the position, the naming of the two accused cannot be doubted.

The learned counsel for the accused persons further

stressed that the case rests on the testimony of PW/5 Tara Ram, the sole eye witness. Without there being any corroboration, his testimony is to be of sterling worth. We have been taken through the statement of Tara Ram . In cross examination, there is no such infirmity which have been elicited by the defence so as to make this witness doubtful. This witness having stood the test of cross-examination, he has stuck to his earlier statement. Merely on the basis of probabilities like the statement regarding direction of two cots, and the vision of the witness in the Ashram, cannot be of much consequence because the injured himself had sustained injuries. The distance between the cots is said to be 17 ft and that is not a distance which can be said to be such, from where the witness could not see the occurrence. There are multiple injuries on the deceased. The number of injuries on the deceased is numbering 9 and it takes time to inflict so many injuries and, therefore, there was sufficient time available to the injured to have seen the assailants , more particularly, when he himself had been assaulted then it cannot be doubted that he has correctly identified the accused.

The learned counsel further said that there is no motive available with the accused to have committed the crime, as has been alleged, by the prosecution. Much can not be read in this argument

because there had been a clear cut observation about the motive by the courts that motive lies hidden in the mind of accused. It is only where a motive is alleged that the courts expect proof of motive. Here no motive has been alleged and, therefore, absence of establishment of motive would not in any way dilute the case.

Thus, we feel that the defence has not been able to establish that the findings of the trial court, are in any way vitiated. The case, as has been held proved by the trial court, does not call for any interference.

In the result, we find that prosecution has succeeded in proving the case against the accused. The finding of the trial court do not deserve any interference and in that view of the matter, the conviction and sentence as awarded by the trial court are affirmed. The appeal is consequently dismissed, the accused are behind the bars they should serve out the sentence.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

L.George